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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

METROPOLITAN LIFE INSURANCE COMPANY,
Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee.

THE TRAVELERS INSURANCE COMPANY,
Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee.

On Appeal From the Supreme Judicial Court of the Commonwealth of Massachusetts

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BRIEF *AMICUS CURIAE* OF THE BLUE CROSS AND BLUE SHIELD ASSOCIATION

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The Blue Cross and Blue Shield Association submits this brief *amicus curiae* in support of the positions of appellants, Metropolitan Life Insurance Company and The Travelers Insurance Company. Appellants argue, respectively, that the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*, and the National Labor Relations Act, 29 U.S.C. §§ 151 *et*

seq., preempt state mandated benefit statutes that apply to insured employee welfare benefit plans. The Blue Cross and Blue Shield Association fully endorses the arguments appellants have presented to the Court.[1]

INTEREST OF THE *AMICUS CURIAE*

The Blue Cross and Blue Shield Association is a non-profit corporation organized under the laws of the State of Illinois. The Association is a membership association that provides central coordinating and administrative services for its ninety-five member Blue Cross and Blue Shield Plans, which also are non-profit corporations. In general, the Plans provide prepaid health benefits to individuals and groups including employee welfare benefit plans, perform as fiscal intermediaries and carriers under the Medicare program, provide services to other non-profit health services organizations, and administer self-insured employee welfare benefit plans.

At the close of 1983, Blue Cross and Blue Shield Plans had approximately 80.4 million subscribers. Of these, approximately 68 million were enrolled in employee welfare benefit plans and, of the 68 million, approximately 15.5 million were enrolled in multistate plans.

ARGUMENT

State mandated benefit laws of the type that are the subject of this litigation increasingly are regulating the benefits that Blue Cross and Blue Shield Plans provide to employee welfare benefit plans. For example, by the end of 1983, 15 states required Blue Cross and Blue Shield Plans to provide benefits for alcoholism treatment; 9, for drug abuse treatment; 12, for the treatment of mental illness; 15, for out-of-hospital care; 4, for breast

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[1] All parties have consented in writing to the filing of this brief. Copies of letters from counsel have been lodged with the Clerk of the Court.

reconstruction; and 1, for treatment of cleft lip and palate.[2]

State mandated benefit laws dictate the substantive content of insured employee welfare benefit plans, contrary to the express intent of Congress to preempt "all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). Mandated benefit laws conflict with ERISA's primary purpose—to encourage nationwide uniformity in employee welfare benefit plans. These laws impose on multistate plans a multitude of benefits—differing from one state to the next—which employees often neither want nor need. The state's selection of benefits overrides the benefits chosen by employers and employees, requiring them either to agree to the increased cost or to forego some other benefit already included in the benefit package.

There is no dispute in this case that ERISA prohibits the direct application of mandated benefit laws to self-insured employee welfare benefit plans. *See* 29 U.S.C. § 1144(b)(2)(B). Massachusetts claims, however, that it is free under ERISA to dictate the benefits provided in an insured plan. Since there is no rational reason for making a distinction between insured and self-insured plans, it is inconceivable that Congress could have intended such an arbitrary result.

We wish to bring to the Court's attention another type of state mandated benefit law that may be affected by the Court's decision in this case: mandated provider or "freedom of choice" laws. These laws impose the same burdens on multistate employee benefit plans as are imposed by the state mandated benefit statutes at issue in this case. Freedom of choice laws do not require the insurer to cover a particular medical condition. Rather,

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[2] *See generally* Blue Cross and Blue Shield Ass'n, *State Required Health Care Benefits* (June 1984).

they require insurers to provide payment to certain specified types of providers if those providers treat an illness or injury that is already covered in the insurance policy. For example, a Maryland freedom of choice law requires health insurers to pay for treatment rendered by a licensed, certified social worker if the insurer already provides benefits for mental illness.[3] At the end of 1983, 46 states had enacted over 170 freedom of choice laws applicable to Blue Cross and Blue Shield Plans.[4]

The Association, on behalf of its member Plans, is vitally interested in this Court's decision whether mandated benefit laws (and mandated provider laws), as applied to insured employee welfare benefit plans, are preempted by ERISA. We urge the Court to reverse the judgment entered on April 25, 1984, by the Supreme Judicial Court of Massachusetts.

Respectfully submitted,

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December 1984

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[3] Md. Ann. Code art. 48A, § 354L (Supp. 1984). For other examples of freedom of choice laws, see Brief Amicus Curiae of Health Ins. Ass'n. of Am. In Support of Jurisdictional Statements, at App. III, *Metropolitan Life Ins. Co.* v. *Massachusetts*, No. 84-325 (U.S. filed Sept. 29, 1984).

[4] *See generally* Blue Cross and Blue Shield Ass'n, *supra* note 2.